

THE COMMONWEALTH OF MASSACHUSETTS  
EXECUTIVE DEPARTMENT

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DEVAL L. PATRICK  
GOVERNOR

TIMOTHY P. MURRAY  
LIEUTENANT GOVERNOR

May 13, 2008

To the Honorable Senate and House of Representatives:

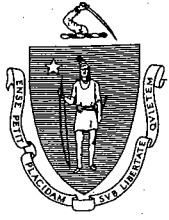
I am filing for your consideration the attached legislative proposal, entitled, "An Act Financing An Accelerated Structurally-Deficient Bridge Improvement Program."

For too long the Commonwealth's bridges have been neglected and gone without repair. This legislation will accelerate the repair and replacement of approximately 250 to 300 Massachusetts bridges identified as structurally deficient. In addition to making our bridges safer, this legislation will create thousands of jobs and complete more bridge projects in less time and at a lower cost. This legislation provides that the repair plan will be financed using \$1.1 billion in grant anticipation notes, which borrow against anticipated future federal funding, and \$1.9 billion in gas tax bonds to be repaid with existing gas tax revenues. This legislation provides economic stimulus, protects public safety and will save the Commonwealth hundreds of millions of dollars in avoided cost inflation and deferred maintenance costs.

I urge your prompt and favorable consideration of this bill to invest in our economy and protect our transportation infrastructure.

Respectfully submitted,

A large, stylized handwritten signature in black ink, which appears to read "Deval Patrick".



# The Commonwealth of Massachusetts

IN THE YEAR TWO THOUSANDEIGHT

## AN ACT

## FINANCING AN ACCELERATED STRUCTURALLY-DEFICIENT BRIDGE IMPROVEMENT PROGRAM

Whereas, the deferred operation of this act would tend to defeat its purpose, which is to immediately provide for an accelerated structurally-deficient bridge improvement program for the commonwealth, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

SECTION 1. To provide for an accelerated structurally-deficient bridge improvement program, the sums set forth in sections 2 and 2A for the several purposes and subject to the conditions specified in this act, are hereby made available, subject to the laws regulating the disbursement of public funds, which sums are in addition to amounts previously appropriated for these purposes.

### SECTION 2.

#### EXECUTIVE OFFICE OF TRANSPORTATION AND PUBLIC WORKS

##### *Department of Highways*

6033-0800 For the design, construction, reconstruction and repair of or improvements to bridges and approaches; provided, that expenditures from this item may include the costs of engineering, design, permitting and other services essential to these projects rendered by

department employees or by consultants; provided further, that amounts expended for department employees may include salary and salary-related expenses of these employees to the extent that they work on or in support of these projects; and provided further that no amounts appropriated under this item shall be expended for bridges or approaches owned by or under the control of the Massachusetts Turnpike Authority or the Massachusetts Bay Transportation Authority.....\$2,078,000,000

**SECTION 2A.**

EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS

*Department of Conservation and Recreation*

2890-0800 For the design, construction, reconstruction and repair of or improvements to bridges and approaches under the control of the department of conservation and recreation; provided, that expenditures from this item may include the costs of engineering, design, permitting and other services essential to these projects rendered by department employees or by consultants; and provided further, that amounts expended for department employees may include salary and salary-related expenses of these employees to the extent that they work on or in support of these projects.....\$906,000,000

**SECTION 3.** To meet a portion of the expenditures necessary in carrying out sections 2 and 2A, the state treasurer shall, upon request of the governor, issue and sell federal grant anticipation notes of the commonwealth in an amount to be specified by the governor from time to time but not exceeding, in the aggregate, \$1,108,000,000. Notes issued under this section shall be in addition to those notes previously issued under section 9 of chapter 11 of

the acts of 1997, as amended by chapter 235 of the acts of 1998, and under section 53A of chapter 29 of the General Laws to refund, in part, such previously issued notes. The notes shall be issued and may be renewed one or more times for such maximum terms as the governor may recommend to the general court in accordance with Section 3 of Article LXII of the Amendments to the Constitution of the commonwealth, but the final maturity of such notes, whether original or renewal, shall be not later than June 30, 2027.

Notwithstanding any general or special law to the contrary, notes issued under this section and the interest thereon shall be special obligations of the commonwealth secured by the Federal Highway Grant Anticipation Note Trust Fund established in section 10 of said chapter 11, as appearing in section 1 of chapter 121 of the acts of 1998 and as further amended by section 3 of chapter 53 of the acts of 1999. Sections 10, 10A and 10B of said chapter 11 shall apply to the notes issued under this section in the same manner and with the same effect as set forth in said sections with respect to the notes previously issued under said section 9 and said section 53A, except as otherwise provided in a trust agreement pertaining to the notes authorized under this section, but any pledge of federal highway construction funds and other funds to secure the notes issued under this section, to the extent that those funds are subject to a prior pledge, shall be subordinate to the pledge of those funds to secure the outstanding notes issued under said section 9 and said section 53A.

A trust agreement entered into with respect to notes authorized under this section shall be considered to be a trust agreement under said section 10B of said chapter 11, as so appearing. The principal or purchase price of, redemption premium, if any, and interest on notes issued hereunder, fees and expenses related to those notes, deposits to reserves, if any, under such trust agreement or such credit enhancement agreement and any reimbursement

amounts shall be considered to be trust agreement obligations for purposes of said sections 10A and 10B.

Notwithstanding any general or special law to the contrary, the commonwealth covenants with the purchasers and all subsequent owners and transferees of any notes issued under this section that while any note shall remain outstanding, and so long as any trust agreement obligation remains unpaid, federal highway construction trust funds shall not be diverted from the purposes identified in said section 10B, except as provided in the trust agreement or credit enhancement agreement relating thereto, nor shall the trusts with which they are impressed be broken, and the pledge and dedication in trust of these funds shall continue unimpaired and unabrogated.

Notwithstanding any general or special law to the contrary, the trust and the Federal Highway Grant Anticipation Note Trust Fund, each established in accordance with said section 10, shall terminate on the date of the final payment or defeasance in full by the commonwealth of all trust agreement obligations under said section 10 and under this act.

**SECTION 3A.** To meet a portion of the expenditures necessary in carrying out sections 2 and 2A, the state treasurer shall, upon request of the governor, issue and sell special obligation bonds of the commonwealth in an amount to be specified by the governor from time to time but not exceeding, in the aggregate, \$1,876,000,000. Bonds issued by the state treasurer under this section shall be issued as special obligation bonds under section 20 of chapter 29 of the General Laws. All special obligation bonds issued under this section shall be designated on their face, Special Obligation Commonwealth Accelerated Structurally-Deficient Bridge Improvement Loan Act of 2008 and shall be issued for a maximum term of

years, not exceeding 30 years, as the governor may recommend to the general court under section 3 of Article LXII of the Amendments to the Constitution. All these bonds shall be payable not later than June 30, 2046. All principal and interest on special obligation bonds issued under this section shall be payable from the Infrastructure Fund established in said section 20 of said chapter 29 and shall be payable solely in accordance with said section 20 of said chapter 29.

**SECTION 3B.** Notwithstanding the provisions of section 3 or section 3A to the contrary, the state treasurer shall, upon the request of the governor, (a) issue any portion of the amount authorized to be issued as federal grant anticipation notes under section 3 as special obligation bonds in addition to the amount authorized in section 3A and otherwise under section 3A, or (b) issue any portion of the amount authorized to be issued as special obligation bonds under section 3A as federal grant anticipation notes in addition to the amount authorized in section 3 and otherwise pursuant to section 3; provided that in no event shall the aggregate amount issued under section 3, section 3A and this section exceed \$2,984,000,000; and provided further that no bonds shall be issued under this section unless the governor and the state treasurer jointly determine, in their sole discretion, that issuing bonds or notes under this section instead of as authorized under section 3 or section 3A, as applicable, is necessary or is in the best financial interests of the commonwealth based on their consideration of: (i) the commonwealth's authority under federal law to issue federal grant anticipation notes pursuant to section 3; (ii) generally prevailing financial market conditions; (iii) the impact of each financing approach on the overall capital financing plans and needs of the commonwealth; (iv) any ratings assigned to outstanding bonds of the commonwealth and any ratings expected to be assigned by any nationally-recognized credit

rating agency to the bonds or notes proposed to be issued; and (v) any applicable provisions of chapter 29.

**SECTION 4.** Bonds and notes issued under sections 3, 3A and 3B of this act shall not be included in the computation of outstanding bonds for purposes of the limit imposed by the second paragraph of section 60A of chapter 29 of the General Laws, nor shall debt service with respect to these bonds and notes be included in the computation of the limit imposed by section 60B of said chapter 29.

**SECTION 5.** (a) In carrying out sections 2 and 2A, and notwithstanding any general or special law to the contrary, the secretary of transportation and public works, department of highways and department of conservation and recreation, in this act called the agencies, may enter into such contracts or agreements as may be necessary or appropriate to carry out this act, and the agencies may enter into contracts or agreements with cities and towns or such other political subdivisions as may be necessary or appropriate to mitigate the effects of projects undertaken pursuant to this act or to otherwise carry out projects pursuant to this act. Such contracts or agreements shall contain minority business enterprise and women business enterprise participation goals and minority and women work force goals as determined by the secretary of administration and finance and the secretary of transportation and public works in accordance with state and federal law. Subject to section 8, the agreements may relate to such matters as the agencies shall determine including, without limitation, the design, layout, permitting, bidding, procurement, construction, reconstruction or management of all or any portion of the projects to be funded in whole or in part with funds made available by this act, and the extent to which management and oversight of the projects shall be coordinated

between and among the agencies. The agreements may also include provisions for the sharing of services between and among the agencies, and such other reforms, efficiency initiatives or actions related to the projects that the agencies determine in their discretion could result in operating cost savings or other benefits for the commonwealth and the agencies, including, without limitation, eliminating or consolidating duplicative functions and facilities, sharing or coordinating equipment, expertise, personnel, bidding and procurement, and sharing resources such as administrative, financial, payroll, information technology, legal, engineering, human resources and other services. The agreements shall provide that all work undertaken on or with respect to any bridge or approach under the control of the department of conservation and recreation shall be carried out according to standards developed by the department of conservation and recreation to protect the scenic and historic integrity of the bridges and related infrastructure under its control. The agreements shall also provide that the commissioner of the department of conservation and recreation shall review and approve preliminary and final design plans to determine whether the plans are consistent with these standards. In relation to agreements with cities, towns or other political subdivisions, the agencies may advance to such entities, without prior expenditure by such entities, monies necessary to carry out such agreements; provided, however, that the agencies shall certify to the comptroller the amount so advanced; and provided further, that all monies not expended under such agreement shall be credited to the account of the department from which they were advanced. The agencies shall report to the house and senate committees on ways and means on any transfers completed pursuant to this paragraph.



(b) Subject to the contracts and agreements executed in accordance with this section and the other requirements of this act, the agencies shall adopt such consolidated bidding, procurement and permitting practices as may be convenient or necessary in carrying out this act, but, notwithstanding any general or special law to the contrary, the selection of engineering services shall be consistent with the current practice of the department of highways, and the process to retain construction services shall comply with chapter 30 or chapter 149A of the General Laws, as applicable; provided, however, that such consolidated bidding, procurement and permitting practices shall not, in any way, diminish or otherwise inhibit the participation goals for minority business enterprises or women business enterprises. Design-build project delivery may be utilized for any such projects or multiple projects taken together without regard to the minimum cost of any project as provided in section 14 of chapter 149A. The contracts for these services may also provide for the use of performance based design, extended work hours, procurement that consider the value of accelerated project delivery in a manner consistent with this act, lane rental costs, bonus payments and penalties for performance and other measures aimed at accelerating project delivery.

(c) The secretary of transportation and public works shall establish an interagency working group which shall consist of the assistant secretary for access and opportunity, the executive director of the state office of minority and women business assistance, the executive director of the affirmative market program, the director of labor, the director of civil rights within the executive office of transportation and public works, the director of affirmative action within the executive office of transportation and public works, a representative of the affirmative market program within the division of capital asset management and maintenance, and, in

consultation with the commissioner of the department of conservation and recreation, a representative of said department of conservation and recreation. The interagency working group shall be charged with developing and overseeing efforts to ensure minority business enterprise and women business enterprise participation and the minority and women work force participation goals established pursuant to the contracts or agreements of paragraph (a).

**SECTION 6.** Notwithstanding any general or special law to the contrary, any appropriated amounts funded from the proceeds of bonds that are to be expended for the general purpose of designing and constructing maintenance and repairs to bridges and approaches other than those monies authorized by this act shall be transferred to the Transportation Deferred Maintenance Trust Fund established under section 69A of chapter 10 of the General Laws and expended in accordance with that section. The comptroller shall make the transfers required by this section from the accounts, in the amounts and at the times directed by the secretary of administration and finance. To the extent sufficient appropriations exist therefor, the governor shall make every reasonable effort to provide for at least 20 per cent of the total bond-funded expenditures in each fiscal year for the department of highways' statewide road and bridge program and for improvements to the department of conservation and recreation's roadways, boulevards, parkways and bridges, exclusive of bond-funded expenditures under sections 2 and 2A, to be applied to the general purpose of designing and constructing maintenance and repairs to the bridges and approaches in accordance with this section.

**SECTION 7.** Notwithstanding any general or special law to the contrary, section 61 and sections 62A to 62I, inclusive, of chapter 30, chapter 91, and section 40 of chapter 131 of the General Laws shall not apply to projects authorized by section 2 of this act, but the design of

these projects must be substantially the functional equivalent of, and in similar alignment to, the structure to be reconstructed or replaced. Section 61 and sections 62A to 62I, inclusive, of chapter 30 shall apply to the repair, reconstruction, replacement or demolition project if the project requires a mandatory environmental impact report under the applicable regulations in 301 CMR 11.00. All work exempted from any law in accordance with this section shall be subject to the requirements of the Massachusetts Highway Department Stormwater Handbook, as approved by the department of environmental protection, in accordance with applicable law. Notice shall be published in the Environmental Monitor on any application to the department of environmental protection for a water quality certification, and the work shall be subject to performance standards prescribed by the department of environmental protection under section 401 of the Federal Clean Water Act if applicable to the project. In the case of any bridge crossing over a railroad right-of-way or railroad tracks, the awarding authority shall seek the opinion of a railroad company, railway company or its assigns operating on the track of a necessary clearance between the track and the bridge. The awarding authority, its agents or contractors may enter upon any right-of-way, land or premises of a railroad company or railway company or its assigns for such purposes as the awarding authority may consider necessary or convenient to carry out this section. If a flagman is needed to carry out this section, the railroad company, railway company or its assigns shall provide the flagman. For the purposes of this section, the word "bridge" shall include any structure spanning and providing passage over water, railroad right-of-way, public or private way, other vehicular facility, or other area. Any project exempted from any law under this section shall also be subject to the public consultation

process required by the Project Development and Design Guidebook of the Massachusetts Highway Department.

**SECTION 8.** Nothing in this act shall be construed to transfer any lands, roadways, boulevards, bridges, approaches or other facilities under the care, custody or control of the department of conservation and recreation.

**SECTION 9.** Section 20 of chapter 29 of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by striking out the second sentence and inserting in place thereof the following 2 sentences:- There shall be credited to the Infrastructure Fund 47.69 per cent of the receipts paid into the treasury of the commonwealth and directed to be credited to the Highway Fund under clause (a) of section 13 of chapter 64A. This amount, together with investments earnings thereon, shall be referred to as “special receipts” and shall be used in accordance with this section.

**SECTION 10.** Chapter 64A of the General Laws is hereby amended by striking out section 13, as appearing in the 2006 Official Edition, and inserting in place thereof the following section:-

Section 13. All sums received from the excise imposed on aviation fuel, and related penalties, forfeitures, interest, costs of suits and fines, less all amounts for reimbursement under sections 7 and 7A, shall be credited to the Highway Fund and may be used for airport development projects approved and carried out at airports and landing facilities under 49 U.S.C. App. section 2210; and all other sums received under the excise imposed in section 4, and relative penalties, forfeitures, interest, costs of suits and fines, less all amounts for reimbursement under sections 7 and 7A, shall be credited as follows:

(a) 99.85 per cent shall be credited to the Highway Fund to be used for transportation-related purposes, and

(b) 0.15 per cent shall be credited to the Inland Fisheries and Game Fund, established by section 2C of chapter 131.

**SECTION 11.** Section 20 of chapter 86 of the acts of 2008 is hereby repealed.